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AUTHOR Linney, Thomas J.
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ABSTRACT

An overview of current literature about alternatives and variations to existing concepts of tenure of faculty is presented. Tenure continues the appointment of faculty until retirement unless there is dismissal for adequate cause or unavoidable termination because of financial exigency or change of institutional program. Academic freedom is assured through procedures providing for academic due process in the case of dismissal for cause and economic security is provided by the expectation of continued employment. A combination of demographic changes, judicial decisions, shifts in the college curriculum, and financial restraint in allocation of resources for higher education suggest that this traditional understanding of tenure systems in higher education may change. In future periods of declining enrollments and financial restraint, more tenured faculty will be terminated, with tenure providing small measure of job security. Two major alternatives to tenure are contract systems and modifications combined with traditional tenure systems. There are numerous variations of contracts that replace tenure, but no major university has yet adopted any form of a contract system. Modifications include extension of the probationary period, establishing periodic evaluation of tenured faculty, establishing a nontenure track, and extensive use of part-time faculty appointments. Some major studies that document the concept and process of tenure in American higher education are cited. (SW)

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ALTERNATIVES TO TENURE

By Thomas J. Linney

Recent research and court decisions suggest that tenure will not provide job protection in times of "financial exigency". Academic employment in public institutions is protected by tenure provisions only in limited areas. For example, the decision in Johnson (1974) maintained that:

> The tenured teacher in a state institution is protected—substantively, so to speak—only from termination or lay-off for a constitutionally impermissible reason such as earlier exercise of First Amendment freedom of expression, or race, or religion, and from termination or lay-off which is wholly arbitrary or unreasonable (*Johnson* 1974, p. 238).

This paper presents an overview of current literature about alternatives and variations to existing concepts of tenure.

Academic tenure in the United States is an arrangement under which faculty appointments in an institution of higher education, after a limited period of probation, are continued until retirement for age or physical disability subject to dismissal for adequate cause or unavoidable termination on account of financial exigency or change of institutional program (Commission on Academic Tenure in Higher Education 1973). The existence of systems of tenure at institutions of higher education are commonly assumed to insure academic freedom and to provide sufficient economic security to encourage men and women of ability to choose academic careers. Academic freedom is assured through procedures providing for academic due process in the case of dismissal for cause and economic security is provided by the expectation of continued employment. A combination of demographic changes, judicial decisions, shifts in the college curriculum, and financial restraint in the allocation of resources for higher education, currently evident in American society, now suggests that this traditional understanding of tenure systems in higher education may change.

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Mix (1978) has provided examples of recent court decisions that uphold faculty termination in cases of financial exigency, provided such determination is made for legitimate and justifiable reasons (AAUP v. Bloomfield College 1974). Tenure protections simply do not extend beyond first amendment principles. Projected stable or declining enrollments show current enrollment levels are the maximum institutions can expect until the year 2000 (Fernandez 1978), with full-time equivalent projections declining to the level of the early sixties over the next 15 years. This suggests conditions creating financial exigency and/or major changes in institutional programs are rapidly becoming year-to-year realities in the enterprise of higher education. Such contraction following the unprecedented expansion of the previous decade, coupled with the increased funding and regulation from both state and federal levels of government, may require modifications or alternatives to existing systems of tenure.

Modifications in the concept of tenure will not be easy to achieve. Among faculty, tenure is viewed as second in importance only to salary when considering variables to evaluate conditions affecting faculty employment (Ladd and Lipsett 1976). Senior administrators surveyed by Glenny et al. (1976) also see little chance of changes in tenure practice, except among two-year institutions where systems of tenure are less universal. Yet, in view of a variety of judicial decisions, especially those concerned with termination of tenured faculty in situations of financial exigency, it seems clear that an examination is in order of alternatives and modifications to existing tenure systems.

Tenure and the Courts

Byse and Joughin (1959) identified the essential characteristics of tenure as continuity of service, meaning the employing institution has made either a legal obligation or moral commitment to the tenured faculty member to continue employment, except under specified conditions. Continuity of this employment exists only under usual and ordinary circumstances (Mix 1978).

Institutions facing financial exigency are conceded the right to dismiss tenured faculty subject to due process considerations. There are, however, significant legal differences between the bases for tenure in public and private institutions, and these differences affect the legal considerations that have taken place when conflict between tenure systems and institutions have entered the courts (Mix 1978).

Such procedures have been established in court decisions that concern dismissal for cause (Shulman 1973) and generally have provided additional legal due process

Thomas J. Linney is a Research Associate at the ERIC Clearinghouse on Higher Education

considerations over and above academic due process procedures that may be a part of institutional policy. Procedural safeguards applied to termination of tenured faculty in situations of financial exigency seem limited to the establishment in court, if necessary, of the legitimacy of the claimed exigency. Once it is established for judicial purposes that financial exigencies do indeed exist, actions taken by institutions have been upheld, including terminations of tenured faculty (Levitt v. Board of Trustees of Nebraska State College (1974); Lumpert v. University of Dubuque (1975); Browzin v. Catholic University (1975).

There is some indication in these court decisions that the administrative or management review of institutional conditions leading to a determination of financial exigency should include the involvement of faculty members in reaching such a decision. Thus, the situation with regard to tenure systems and the courts can be summarized as providing additional due process safeguards in cases of dismissal for cause, and only limited legal recourse in cases of termination for financial exigency or program termination.

It follows that in future periods of declining enrollments and financial restraint more tenured faculty will be terminated, with tenure providing small measure of job security. It is this situation that has given new impetus to examinations of tenure alternatives.

Alternatives and Modifications to Tenure Systems

Viewed historically, tenure has evolved by adapting to the development of the university. First codified in 1158 by the Emperor Frederick Barbarossa, the ancestors of current tenure systems protected the scholar from attack in domiciles and on journeys.

Subsequent evolutionary steps have brought tenure systems to their current status, which still provide the scholar certain protections to assure academic freedom. The twin goals of the tenure system—academic freedom with due process and the expectation of continued employment as described and advocated by the AAUP—will not easily be put aside; therefore, it seems a fair assumption that any alternatives or modifications to tenure systems will only be successful to the extent that they are able to provide academic freedom and academic due process.

Modifications to the tenure systems in institutions can take a number of forms and be directed to address several major problems that tenure systems are perceived to create. Several major studies at both institutional and national levels have been conducted to document the concept and process of tenure in American higher education (Carnegie Commission 1972; Commission on Academic Tenure 1973; Smith and Associates 1973; Harvard University 1970; University of Utah 1971; University of California 1971; Stanford University 1971). All of these studies support the continued existence of tenure systems. The Commission on Academic Tenure, jointly sponsored by the American Association of Colleges and the American Association of University Professors, provided the most extensive report, complete with forty-six recommendations for institutions relative to the future of academic tenure. While the commission's conclusions support the continued existence of tenure throughout institutions of higher education, the recommendations support considerable institutional modification of the procedures and processes at various levels of academic administration.

More recently, the Carnegie Council on Policy Studies in Higher Education and the American Council on Education have issued reports that describe two more policy issues that relate to possible modification of existing tenure systems. The Kuh and Radner (1978) studies for the Carnegie Council demonstrate that tenure is an economic variable in the academic labor market. As enrollments and the size of the faculty increased in the 1960's, the time from receipt of doctoral degree to promotion to tenure decreased. In the 1970's, with the beginning of declining growth rates, the rate of time to tenure began to increase, particularly in the private sector. Kuh and Radner project that this will mean a depressed academic labor market in the 1980's and 1990's, high tenure ratios of 70 to 80 percent among faculties throughout the next two decades, and, most importantly, a diminished flow of younger scholars into the academic profession during this time.

Corwin and Knepper (1978) discuss the implications of the Age Discrimination in Employment Act of 1978. While regulations have yet to be issued, the basic effect of this new law is to raise the mandatory age from 65 to 70 effective in 1979 (ACE et al. 1979). Tenured employees of colleges and universities will not be affected by this law until July 1, 1982, except in states where the mandatory retirement age has already been raised. The effect of this new legislation will be to further depress the academic job market and make more complicated the task of academic and staff planning in response to changing enrollments and curricular needs of students.

Taken together, there are a considerable number of pressures for change in the tenure systems of higher education. The inherently pluralistic nature of higher education has provided some initial experiences with tenure alternatives. Two major forms of tenure alternatives have emerged: contract systems and modifications combined with traditional tenure systems.

Contract Systems

Contract systems replace tenure with a contract for service that provides no expectation of continued employment beyond the term of the contract. There are several variations: growth contracts, development contracts, learning contracts, rolling contracts, and term contracts. The goals of contract systems are to maintain flexibility in staffing and an ability to respond to changing needs quickly while adding accountability by the opportunity to review terms and conditions of employment frequently. These goals are met through limiting the term of the contract, providing specified growth or development in the contractural agreement, and rewarding such development with increasing length of contract or with guarantees of renewal after specified periods of time. Often contract systems contain some combination of all these elements. Institutional experience has been limited

to some small four-year colleges and an estimated one-third of community colleges. Hampshire College and Evergreen State College are notable practitioners of contract systems. Both are new colleges founded with a deliberate absence of tenure systems. Other colleges with contract systems include: Franklin Pierce College, Goddard College, University of Texas (Permian Basin), Austin Community College, and the entire Virginia Community College system (Chait forthcoming). Virginia is the only state system to abolish an existing tenure system and to replace it with a contract system. Done under protest, it provides continued tenure for employees who had already secured it and applies term contracts only to new employees (AAUP 1975).

Discussions of contract systems in the literature (Von Der Lippe 1971; Vaccaro 1972, 1977; Longsworth 1977; Furniss and El-Khawas 1972, 1974) reveal an emphasis on career development and coordination among contract faculty and administration relative to the needs of students and the areas of curriculum specialization to be developed. The literature also reveals very high rates of contract renewal but as yet little experience with academic freedom issues in contract systems. It should be noted that all of these institutions or systems are small, often take innovative approaches to the curriculum, and have less than a decade of experience with contract renewal. Advocates of contract systems claim the short-term commitments will yield staff flexibility and provide increased opportunity for faculty development through links with contract renewal (O'Toole 1978; Drucker 1977). Critics cite high renewal rates, the commitment of time required for skilled academic administrators and personnel specialists, and difficulty in recruiting (Chait forthcoming). No major university has yet adopted any form of a contract system.

Modifications Combined with Traditional Tenure Systems

Modifications alter or make additions to standard tenure systems, while allowing some form of tenure to remain in existence at an institution. Modifications that in most cases permit some form of tenure while adding institutional flexibility include; extension of the probationary period, establishing periodic evaluation of tenured faculty, adopting a contract system prior to or subsequent to the probationary period, establishing nontenure track or academic staff positions outside of existing tenure systems, establishment of tenure quotas, and the extensive use of part-time faculty appointments. Often they are used in some combination. High percentages of tenured faculty are often used to justify the imposition of these changes. Modifications to conventional tenure systems are found in a variety of institutions; such alterations generally are opposed by the AAUP. The imposition of such modifications usually creates considerable design and evaluation work for the administrative staff. This situation is compounded when tenure quotas are a part of the changes. Chait (1976) has recommended clear separation of quotas from other modifications.

The use of such modifications are the most widely used alternatives to tenure. Alternatives that only modify existing tenure systems can be very attractive to institutions that are facing an uncertain future. Support for quota systems is growing, as they represent the single easiest alternative to tenure systems (Chacra and Heterick 1975; Simpson 1976; Furniss and El-Khawas 1972, 1974). Some institutions have adopted explicit quotas and formulas for tenure while providing increased benefits for nontenure-track employees, such as the sabbatical leave plan at Webster College. Other colleges have no explicit options but are hiring an increased number of faculty outside tenure-track positions (AAUP 1978). Part-time positions are also included within this type of tenure alternative but data on use of part-time faculty is more limited. Leslie (1978) estimates that part-timers make up one-third of all faculty at postsecondary institutions and over one-half of all community college faculty.

Several institutions have extended the probationary period. The University of Rochester, University of Georgia, and the University of Tulsa have extensions of the probationary period, some of which are limited to years in specific faculty ranks and which together can extend the probationary period up to 13 years. Such institutions argue that the longer time period is more appropriate to institutional objectives. Other institutions add term contracts after the probationary period and prior to granting tenure. Union College and Albion College have arrangements that grant "tenurable status" to faculty on contracts. Advocates of such modifications argue they increase flexibility, permit the retention of talented faculty, and increase the probability for tenure. Critics say an increase in faculty anxiety and "tenurable status" creates a faculty of diminished status that is actually tenured in all but name.

Periodic evaluation of tenured faculty is an alternative with the potential for broad application. AAUP policy is not opposed to such evaluations, provided the evaluation itself is not grounds for dismissal and any separations recommended are subject to academic due process in the normal manner. Such evaluations are often carried out in connection with reappointment, promotion and salary decisions, as well as tenure. Extending them to the entire faculty is a more streamlined process than other alternatives. Coe College and St. Lawrence University have adopted periodic evaluations that are similar in nature to the development contracts used at Evergreen State and Hampshire College. These evaluations offer the least modification to regular tenure procedures with the additional capacity for long-range planning and faculty involvement with the growth and development of the college.

All of the major alternatives or modifications to tenure systems have institutional adherents. Beyond advocacy however, serious evaluation is still lacking. While there is discussion in the literature of most of the alternatives and modifications described above, much of this is descriptive or a matter of advocacy and not analytical. Chait and Ford (Forthcoming) are developing a survey and report on the principal modifications and alternatives to tenure practice as implemented at a variety of campuses.

Summary and Conclusions

Alternatives and modifications to tenure systems are

still relatively new developments. Their appearance is generally confined to community colleges and private colleges, except in the cases of state-supported institutions.

where modifications to traditional tenure systems have been adopted by state action. The forces of fiscal restraint and potential financial exigency, when coupled with cases of retrenchment and the concern for vitality and flexibility among faculty and curricula, will continue to put pressure on traditional tenure systems. The additional element of revision to mandatory retirement laws, already in effect in some states and scheduled as federal policy for colleges and university employees in 1982, along with declining or changing enrollments, will add to the pressure. Future expansion of collective bargaining between faculty bargaining units and college administrations may also affect the process of tenure (Lee 1978). Menard (1975) suggests that tenure itself may become the subject of collective bargaining.

Whether such additional pressures will force more institutions to see alternatives to the present system of tenure or whether that system will embrace additional modifications is not yet clear. No major public or private university has yet to adopt any of the alternatives discussed in this paper. The American Association of University Professors remains a staunch advocate and defender of existing tenure systems, opposing most of the alternatives and modifications discussed in this paper. Whether the current pressures on tenure systems and the nature of the university are sufficient to force large-scale modifications in the existing systems of tenure cannot be judged at this time. Certainly the debate over the future of tenure systems and possible alternatives is becoming more strident (O'Toole 1978; Van Alstyne 1978). Debate about procedures, professional actions, union activities, and the legitimacy and veracity of policies and policy statements concerning tenure is intensifying (Furniss 1977, 1978; Weisberger 1978; Brown and Finkin 1978).

There are a number of actions that the higher education community should address at the campus level with respect to both alternatives to tenure and the existing conditions generating pressure for those alternatives. Clear and current procedures specifying the tenure system in use at each campus, the requirements for reappointment, the granting of tenure and requirements for promotion ought to be made available to each faculty member. Each campus ought to develop a plan of action that will be taken in the event of financial exigency, severe retrenchment, or the need tochange or close down program offerings (Moore 1978; Furniss 1974).

The faculty should be involved in this planning. Once it is completed it should be added to the faculty procedures specified above. Faculty and administrative effort addressing these procedures in advance of their need can forestall court actions arising out of unresolved procedural issues. In addition to procedures, a review of administrative responsibility for academic planning, institutional research, faculty development, legal advice, personnel services, and financial planning should take place to insure that proper resources of staff and data are developed to aid in any exigency situation that may develop. Faculty and administrators should review the recommendations of the Commission on Academic Tenure in Higher Education and determine if modifications are needed in any existing tenure policies. If so, those modifications should be undertaken and revised procedures issued to the campus community. College and university administration, like most aspects of the society, is becoming a more complex task. Appropriate attention to the detail and procedures coming in the next two decades will serve all members of the higher education community.

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